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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,171	01/27/2006	Marcus Bachmann	2003P12731WOUS	2510

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COHEN, PONTANI, LIEBERMAN & PAVANE LLP
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NEW YORK, NY 10176

EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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01/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,171

Applicant(s)

BACHMANN ET AL.

Examiner

Christopher S. Kim

Art Unit

3752

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7,9,10,12,13 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-7,9,10,12,13 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/12/08.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 12, 2008 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

3. The amendment filed November 12, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: figure 3b showing two half cylinders and film hinge; the addition to page 7, lines 16-19, "Further, the insert 6 comprises two half-cylinders 27a, 27b, which are connected integrally to one another via a film hinge 28, the functions of which are discussed in further detail below with respect to Fig. 4."

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. Claims 3-7, 9, 10, 12, 13, 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 16 recites the "insert...configured to retain the washing nozzle within the nozzle holder...wherein the insert is divided along a longitudinal axis into two substantial half-cylinders..." It appears that new independent claims 16 is directed to the embodiment of Figure 3B. The specification fails to teach that, in the embodiment of Figure 3B, insert 6 comprises two half-cylinders. In fact, the specification only discloses that the embodiment of figure 4 comprises two half-cylinders 6a, 6b. See applicant's specification, on page 7, wherein the three embodiments of Figures 3A, 3B and 4 are distinguished.

5. Claims 3-7, 9, 10, 12, 13, 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 16 recites the "insert...configured to retain the washing nozzle within the nozzle holder...wherein the insert is divided along a longitudinal axis into two substantial

half-cylinders...” It appears that new independent claims 16 is directed to the embodiment of Figure 3B. Even if new claim 16 does not constitute new matter, the specification fails to enable claim 16. The specification fails to teach that, in the embodiment of Figure 3B, insert 6 comprises two half-cylinders. In fact, the specification only discloses that the embodiment of figure 4 comprises two half-cylinders 6a, 6b. See applicant's specification, on page 7, wherein the three embodiments of Figures 3A, 3B and 4 are distinguished.

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, the recitation “step-like” renders the claim indefinite.

Claim Rejections - 35 USC § 103

7. Claims 3-7, 9, 10, 12, 13, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newill (2,898,036) in view of Christodoulou et al. (WO02/44608).

Newill discloses a device comprising:

a nozzle holder 10, 52;

a washing nozzle 32, 62;

an insert 18, 56;

a cutout 30, 58 (fig. 2 shows the left most end of cutout 30 being tapered);

a chamber 28, 64;

the nozzle holder 52 is mushroom form (figure 4) and on the underside of its head region has latching means (mounting hardware; column 2, lines 15-20).

Newill does not disclose that insert 50 is divided along a longitudinal axis into two substantial half-cylinders connected at one edge.

Christodoulou teaches to manufacture a cylindrical object 8 from two half cylinders 20, 21 with a hinge 22.

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have formed the insert of Newill from two half cylinders with a hinge as taught by Christodoulou for ease of manufacturing (Christodoulou, page 13, lines 13-15).

Response to Arguments

8. Applicant's arguments filed November 12, 2008 have been fully considered but they are not persuasive.

Regarding the new matter issue, applicant argues that original claim 1, which has been previously canceled, provides support for the two half cylinders. Claim 1, as amended by the preliminary amendment filed with entry into the national stage, provides support for the two half cylinders, but the preliminary amendment filed with a submission to enter the national stage of the international application under 35 U.S.C. 371 is not part of the original disclosure under 37 CFR 1.115(a). MPEP 714.01(e).

Regarding the indefiniteness of "step-like," See MPEP 2173.05(b)F.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation can be found in Christodoulou, page 13, lines 13-15.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/
Primary Examiner, Art Unit 3752

CK